Supreme Court, U.S.
FILED
APR 27 1988
JOSEPH F. SPANIOL, JR.
CLERK

No.:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987.

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MASHUQ A. QURESHI, M.D. Petitioner

v.

NATIONAL SAVINGS AND TRUST COMPANY
SECURITY NATIONAL BANK
TELEPHONE CORPORATION OF AMERICA Respondents

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Petition for writ of certiorari to
the United States Court of Appeals
for the District of Columbia Circuit

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Mashuq A Qureshi,MD Pro Se
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(703) 379-8030

## QUESTIONS PRESENTED FOR REVIEW

Regarding NS&T and SNB

1. If there was no endorsement of the payee on the check, could NS&T and SNB pay for the check?

2. Is NS&T not liable for breach of contract to its customer the petitioner in paying for the check, which lacks endorsement of the payee?

Regarding TELCOA

1. Was the petitioner not a secured party with priority on the Telephone equipment?

2. Was the petitioner not a Bona fide purchaser for value of the equipment from Mr. Gordon?

3. Is petitioner not entitled to interest on the judgment from the date Telcoa wrongfully repossessed the equipment?

4. Was Telcoa who converted petitioner's equipment on false pretences not liable to make the petitioner whole for his loss of

$47,500 with interest?

Parties

Petitioner: Mashuq A. Qureshi, M.D.

Respondents:

1) National Savings & Trust Company.

2) Security National Bank.

3) Telephone Corporation of America.

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## OPINION BELOW

The Court of appeals entered it's memorandum decision on November 30, 1987, affirming District Court's order of February 10, 1983 for petitioner's claim against National Savings & Trust Company (Herein after NS&T), judgment on the jury verdict entered July 26, 1984 for Security National Bank (Herein after SNB), judgment on the jury verdict entered August 30, 1985 for Telephone Corporation of America (Herein after Telcoa). A copy of the memorandum decision is attached as appendix A. The court denied petitioner's petition for rehearing and suggestion for rehearing en banc on January 28, 1988. A copy of the order is attached as appendix B.

## JURISDICTION

On November 30, 1987 the Court of Appeals entered judgment against the petitioner affirming District Court's orders dismissing petitioners claims against NS&T, SNB and Telcoa. (App.A). On January 28, 1988, petitioner's petition for rehearing and suggestion for rehearing en banc was denied

(App. B)

The jurisdiction of this Court is invoked under Title 28 U.S. Code section 1254 (1).

## CONSTITUTION AND STATUTES INVOLVED

United States Constitution, amendment V:

Nor shall any person... be deprived of life, liberty or property, without due process of law. Ucc 2-403, 3-302, 4-207,9-301,312

## STATEMENTS OF THE CASE (App.3)

Regarding NS&T and SNB:-

On April, 1981, the petitioner issued a check for $20,000.00 drawn on his NS&T account for Medac General partnership II the payee. The check was not endorsed by the payee and did not get credited into the account of the payee. SNB credited the check to an entity, which was not the payee. NS&T charged the petitioner's account, it's customer for $20,000.00 simply because of the warranty of SNB. NS&T was aware that the endorsement of the payee on the check was missing. NS&T did not restore the petitioner's account for the amount of the check.

The district court dismissed petitioner's claim against NS&T on February 10, 1983 for failure to state a claim on which relief may be granted. The petitioner lost his claim against SNB on July 26, 1984 pursuant to a jury verdict.

Regarding Telcoa:-

On April 1, 1981, petitioner purchased a telephone equipment from Mr. Gordon for $47,500.00 and entered in a sale lease back agreement. After about 3 months, Mr Gordon absconded. Telcoa repossessed the equipment from Mr. Gordon's premises maintaining that they had sold the equipment to Mr. Gordon, but were not paid for it.

In fact, Telcoa was paid $24,000.00 for the equipment by Mr. Gordon, except for $800.00 + taxes. Telcoa had not filed under u.c.c. it's security interest. However, the petitioner's security interest was duly filed under the u.c.c. with priority,ucc 3-301 & 3-312. The petitioner was awarded judgment against

Telcoa of $17,440.00 pursuant to jury verdict on August 30, 1985. Petitioner's claim for interest to date from June 1981, the date of repossession of the equipment was denied by the District Court.

The appeals Court affirmed the findings of the District Court on November 30, 1987. The petitioner's petition for rehearing and suggestion for rehearing en banc were denied on January 28, 1988. Federal jurisdiction was diversity based.

FOR GRANTING THE WRIT/REASONS

Regarding NS&T and SNB:-

1. SNB did not find the endorsement of the payee on the check. Therefore SNB was not a holder in due course. Therefore S.N.B. was in violation of u.c.c. 4-207 & u.c.c. 3-302.

2. NS&T, the drawee, should not have paid for the check simply because SNB warranted it, where there was no endorsement of the payee on the check. NS&T was therefore liable to the petitioner, it's customer for breach of contract.

3. The decision of the Appeals Court is in conflict with the Fifth Court:-

a) First City Nat. Bank v. Federal Deposit Insurance Co. 782F. 2d 1344 (5th cir. 1986). NS&T should have claimed against SNB for its breach of warranty for lack of endorsement of the payee. In effect both SNB and NS&T have converted the appellant's check.

b) Perini Corp. v. First Nat. Bank 553 F.2d 398 (5th cir. 1977).

The endorsement of payee was required to satisfy statutory warranty of good title.

Based upon the above reasons, petitioner should have had judgment against both NS&T and SNB.

Regarding Telcoa:-

1. Telcoa which did not have a filed security interest on the equipment wrongfully repossessed the equipment of the petitioner who had a perfected security interest,ucc 9-301,312. Telcoa converted the equipment of the petitioner for which petitioner had paid $47,500.00 and had set it up in sale lease

back. Telcoa should make the petitioner whole for his loss proximately cause by Telcoa's actions.

2)Petitioner was a Bona fide purchaser of equipment for value under u.c.c. 2-403, hence petitioner had superior rights on the equipment than Telcoa.

3) Petitioner was entitled to award of interest by the court on the judgment from the date of repossession of the equipment by Telcoa in June 1981.

4) Telcoa asserted false-hood when it stated that it had not received $24,000.00 on the equipment from Mr. Gordon.

5) The equipment was not consumer goods. It was business equipment. Telcoa could not repossess equipment without Court's intervention.

Based on the above reasons, Telcoa should have been made to pay to the petitioner $47,500.00 with interest to date from June 1981.

## CONCLUSION

Under rule 52 (a) of the Fed. T. civ. p,

the Appeals Court should have found for the petitioner, because the findings of fact by the district Court were clearly in error. There was misapplication of the code and case law. There is conflict in the circuits. Therefore the petitioner requests, that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia.

Respectfully submitted,

Mashuq A. Qureshi, M.D.

petitioner Pro Se

611 South Carlin Springs Rd.

Suite 104

Arlington, Virginia 22204

Dated 04/27/88.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 87

MASHUQ A. QURESHI, M.D.

v.

NATIONAL SAVINGS AND TRUST COMPANY

et al

## PROOF OF SERVICE

The petitioner certifies under the penalty of perjury that on 04/27/88, 3 copies of this petition was mailed postage prepaid first class to:

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MASHUQ A. QURESHI, M.D.
Petitioner
611 So. Carlin Springs Rd.
Arlington, Virginia 22204
(703) 379-8030

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 86-7041 September Term, 1987

C.A. No. 82-03673

MASHUQ A. QURESHI, M.D.,

Appellant

v.

NATIONAL SAVINGS & TRUST COMPANY, et al.

AND CONSOLIDATED CASE

BEFORE: Mikva, Edwards and Bork,

Circuit Judges

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

J U D G M E N T

This case was considered on the record on appeal from the United States District Court for the District of Columbia and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for a published opinion.

APPENDIX A.

See D.C. Cir. Rule 14 (i). For the reasons set forth in the accompanying memorandum, it is

ORDERED and ADJUDGED by the court that the district court order of February 10, 1983, be affirmed; the judgment on the jury verdict entered July 26, 1984, be affirmed; and the judgment on the jury verdict entered August 30, 1985 be affirmed.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

No. 86-7041 -- Qureshi v. NS&T et al.

MEMORANDUM

Mashuq A. Qureshi, M.D., proceeding pro se, appeals from a district court order adjudicating three claims against three parties. His case against National Savings

and Trust Co. (NS&T) was dismissed on February 19, 1983, for failure to state a claim on which relief may be granted. On July 26, 1984, a judgment on the jury verdict was entered in favor of Security National Bank (SNB). On August 30, 1985, a judgment on the jury verdict awarding Qureshi $17,440 was entered against Telephone Company of America (Telcoa). Telcoa also cross-appeals from the judgment entered in Qureshi's favor.

The claims all arise from essentially the same business transaction. Qureshi, seeking to invest in tax shelters, brought telephone equipment from Richard Gordon and then leased the equipment back to Gordon in a "sale-leaseback" agreement. Gordon had bought the equipment from Telcoa for $24,800 plus $1488 tax and Telcoa reserved title to the equipment pending full payment. Qureshi, however, paid Gordon $47,500 for the equipment.

Qureshi also entered into a partnership with Gordon in furtherance of the tax shelter plan. Qureshi wrote a $20,000 check on his NS&T account, payable to Medac General Partnership II, to purchase two shares in Medac, a partnership which Gordon controlled. Gordon endorsed the check with the notation "Pay to the order of Medtronics, Inc.," signed his name and deposited the check in his Medtronics account at SNB. SNB presented the check to the payor bank NS&T for collection. NS&T verified the authenticity of Qureshi's signature on the check land debited Qureshi's account by $20,000. At the time, Medac did not have an account at NS&T, but one was opened six weeks later.

Gordon neither made lease payments to Qureshi under the sale-lease back attangement, nor delivered to Qureshi the two shares in the Medac partnership. Gordon thereafter absconded and by 1983 was reportedly in federal prison in Connecticut.

Telcoa, upon learning of Gordon's absence, repossessed and resold the telephone equipment. Qureshi then sought to recover the money lost in the deals by bringing actions against NS&T, SNB and Telcoa.

1. Claims against NS&T

Qureshi argues on appeal that NS&T had a duty to ensure that the check was properly payable before debiting his account, and NS&T breached that duty when it honored the check. The district court found that NS&T was entitled to rely on the warranty of SNB, the presenting bank, that the endorsement on the check was proper. See D.C. Code 28:4-207(1) (1981). The district court dismissed Qureshi's action against NS&T for failure to state a claim on which relief could be granted. We find this to be the correct application of section 4-207. Therefore, the district court decision is affirmed for the reasons set forth in that

court's order and memorandum filed February 10, 1983.

II. Claims against SNB

Qureshi raises three issues relating to SNB: there is error in the jury's finding that SNB did not violate section 4-207 when it accepted Gordon's "unauthorized endorsement" without ascertaining that Gordon acted with authority on behalf of the partnership; the trial court erred in excluding certain evidentiary material as irrelevant; and the trial court erred in instructing the jury that the endorsement is presumed valid.

None of Qureshi's claims against SNB warrants reversal of the judgment on the verdict. Findings of fact may not be set aside unless clearly erroneous. Fed. R. Civ. P. 52(a); see Cuddy v. Carmen, 762 F.2d 119, 123-24 (D.C. Cir. 1985); Case v. Morrisette, 475 F. 2d 1300, 1307 (D.C. CIr. 1973). In this case, the jury's finding that a

partnership existed and that Gordon was authorized to sign on behalf of the partnership does not even approach the clearly erroeneous threshold. As to the evidentiary claims, the district court properly found that the excluded material was irrelevant. Finally, Qureshi asserts nothing to show error in the instruction that the signature is accorded a presumption of validity; under applicable law such an instruction is proper. See D.C. Code 28:3-307 (1981) (when "effectiveness of signature is put in issue, the signature is presumed to be genuine or authorized")

III Claim against Telcoa

Qureshi claims he had a security interest in the telephone euqipment, while Telcoa did not, and therefore Telcoa's repossession and resale of the equipment amounted to conversion. Qureshi also alleges that Telcoa perjured itself when it denied receiving from Gordon the $24 000 to purchase the equipment. The

jury found that Telcoa had a right to repossess and resell the telephone equipment, but should have applied the proceeds to satisfy both the outstanding debt Gordon owed on the equipment and Telcoa's costs of repossession and resale. Accordingly, the jury awarded Qureshi $17,500. On appeal, Qureshi seeks "to be made whole" with and award of $47,500, the amount borrowed to purchase the equipment, and also asks for interest at 2 percent above the prime rate and reimbursement of various fee. Applying the clearly erroneous standard of Fed. R. Civ. P. 52, Qureshi fails to demostrate clear error in the finding that Telcoa had a right to repossess and resell the equipment, i.e., that Telcoa had a superior security interest and thus did not "convert" the property. Moreover, Qureshi did not raise the perjury issue at trial and cannot raise the issue for the first time on appeal.

District of Columbia v. Air Florida, Inc.,

BEST AVAILABLE COPY

750 F.2d 1077, 1084-85 (D.C. Cir. 1984). The judgment on the jury verdict is therefore affirmed.

IV Telcoa's Cross Appeal

Telcoa does not challenge the district court's determination of the respective interests of the perties, but argues on cross appeal that the amount of the verdict was contrary to the weight of the evidence and seeks a remittitur for an award of #3952, or a new trial on the damages issue. Telcoa seems to make a ldual argument: (1) the jury should have been instructed to compute the value of the hardware separately from the value of the intangibles, and (2) the jury arrived at an award that was not reasonable. Neither argument suffices to give Telcoa the relief sought.

Telcoa did not object to the jury instruction that the jury consider the value of the "telephone equipment" before the jury began deliberating. Therefore, according to

Fed. R. Civ. P. 51, it cannot assign error to the instructions. Further Telcoa bears a heavy burden to establish that the jury award is so far beyond the realm of reason that it requires correction. Fields v. Washington Metropolitan Area Transit Authority, 743 F.2d 890, 895 (D.C. Cir. 1984) (award disturbed only when so grossly excessive that allowing to stand is abuse of iscretion); Carter v. Duncan-Huggins,Ltd., 727 F.2d 1225, 1238-39 (D.C. cir. 1984) (award must be within reasonable range and jury cannot speculate or engage in improper activity); Taylor v. Washington Terminal Co. 409 F.2d 145, 148 (D.C.Cir.) (award must be contrary to all reason before remittitur or new trial warranted), cert. denied, 396 U.S. 835 (1969). The jury was instructed to consider the value of the telephone equipment. The award, given that instruction, is not grossly excessive or contrary to all reason and therefore must stand.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA COURT

No. 86-7041 September Term, 1987

MASHUQ A. QURESHI, M.D.

v.

NATIONAL SAVINGS & TRUST CO.,etal.

BEFORE: MIKVA, EDWARDS and BORK,

Circuit Judges

O R D E R

Upon consideration of appellant's petition for rehearing, it is ORDERED, by the Court, that the petition is denied.

Per Curiam

FOR THE COURT:

CONSTANCE L. DUPRE,

CLERK

BY:

Robert A. Booner

Deputy Clerk

APPENDIX B.

Chief Judge Wald did not participate in this order.

Circuit Judge Bork did not vote in this matter.

APPENDIX B.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 86-7041 September Term, 1987

MASHUQ A. QURESHI, M.D.

v.

NATIONAL SAVINGS & TRUST CO.,et al.

BEFORE: Wald, Chief Judge; Robinson, Mikva, Edwards, Ruth B. Ginsburg, Bork, Starr, Silberman, Buckley, Williams, D. H. Ginsburg and Sentelle, Circuit Judges

O R D E R

Appellant's suggestion for rehearing en banc has been circulated to the full Court. No member of the Court requested the taking of a vote thereon.

ORDERED, by the Court en banc, that the suggestion is denied.

Per Curiam

FOR THE COURT:

CONSTANCE L. DUPRE, CLERK

BY: Robert A.Booner, Deputy Clerk

APPENDIX B.

APPENDIX 3

ucc 2-403: (1) A person with voidable title has power to transfer a good title to a good faith purchaser for value.

ucc 3-302: (1) A holder in due course is a holder who takes intrument a) for value. b) in good faith.

ucc 4-207: (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor bank who in good faith pays or accepts the items that:
a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title.

APPENDIX 3

ucc 9-301: (1) An perfected security interest is subordinate to the rights of (a) Persons entitled to priority under section 9-312.

ucc 9-312: (4)(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral on the time the security interest is first perfected.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.